IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4696 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANESHBHAI FAKIRBHAI BANDOLKAR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR CJ VIN for Petitioner

Mr.Premal Joshi, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India challenging the order made by the respondent no.1 on 15.6.1999 detaining the detenu under the provisions contained in the Gujarat Prevention of Anti-Social Activities (for short `PASA').

2. The grounds of detention disclosed to the detenu are annexed at Annexure C dated 15.6.1999. Reading the same it appears that the detenu was engaged in selling illicit foreign made liquor. He was found with 172 bottles of liquor worth Rs. 31,800/-. The Police registered criminal case against the detenu for offences punishable under the provisions of the Bombay Prohibition Act. From the ground of detention it further transpires that the detenu is in habit of beating innocent persons residing in the locality and passers. He used to use dangerous weapons. It is also stated in the grounds of detention that detenu with his associates was indulging in these activities. On account of atmosphere of terror created by the detenu and his associates, law and order situation could not be maintained. The detenu was threatening people not to file complaint with threats that the same would result in serious consequences. The respondent State and the respondent Commissioner of Police have not filed their affidavits. It appears that the detenu made a representation to the Commissioner of Police on 26.6.99 which was received by the Detaining Authority i.e. Commissioner of Police on 26.6.99 and the same was forwarded to the Government on 30.6.99 which has been disposed of by the State Government on 5.7.99. Apart from the delay aspect from the facts and circumstances of the case, Mr.Desai could not point out any reason as to why the Detaining Authority did not consider the representation despite in the order itself it was made clear that if he wants to make a representation, he can send the same within 12 days to the Commissioner of Police. No doubt it was mentioned in the order of detention that if at all he was interested to make a representation, he may make a representation to the State Government addressing to the Additional Chief Secretary, Home (Special) Sachivalaya, Government of Gujarat, Gandhinagar. Shri Desai was not able to state as to why the said representation was not decided in accordance with law and therefore the continued detention of the detenu is required to be held illegal.

3. Under the circumstances, the order of detention is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in any other case. The petition is accordingly allowed. Rule made absolute. No order as to costs.

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